

MINUTES OF THE REGULAR MEETING OF FEBRUARY 25, 2016

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 25, 2016 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Michael Johnson, Mr. Rodney Smith, Mr. I.G. Burton, and Mr. Marty Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Ms. Janelle Cornwell – Planning and Zoning Manager and Mr. Daniel Brandewie – Planner II.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of February 11, 2016 as amended. Motion carried 5 – 0.

OLD BUSINESS

Mr. Wheatley announced that there are no Old Business items for consideration this evening.

PUBLIC HEARINGS

Mr. Robertson explained the process of holding the public hearings.

C/U #2045 – Robert and Deborah Reed – RE/MAX Realty Group

An Ordinance to grant a Conditional Use of land in a B-1 (Neighborhood Business District) for multi-family dwelling structures to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 31.34 acres, more or less. The property is located southwest of Oak Orchard Road (Route 5 and Road 297) approximately 600 feet south of John J. Williams Highway (Route 24) and fronting the southerly right-of-way of John J. Williams Highway (Route 24). (911 Address: None Available). Tax Map I.D. 234-29.00-69.01 – 69.11.

The Commission found that DelDOT provided comments in the form of a letter, dated December 2, 2015, and a Support Facilities Report referencing that since this project will generate less traffic than the commercial/business uses that could be established by commercially developing the site a Traffic Impact Study is not warranted; that a Traffic Impact Study was performed for the original proposed commercial development of the site; and that the applicant will still be required to make an equitable contribution toward the DelDOT project at the intersection of Route 24/Oak Orchard Road/Mount Joy Road.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum on February 23, 2015 referencing that the project is in the Oak Orchard Sanitary Sewer District; that wastewater capacity is

available for the project; that Ordinance 38 construction will be required; that the current System Connection Charge Rate is \$4,510.00 per EDU; that sewer connection points are available; that conformity to the North Coastal Planning Study will be required; that connection to the sewer system is mandatory; that sewer capacity is available on the basis of 6.67 EDU per acre or 142 EDU; that the project slightly exceeds sewer system design assumptions; that sewer connection points have been provided; that an existing sewer easement across the property will be addressed during the concept plan review phase; that the County requires design and construction of the collection and transmission system to meet County Engineering requirements and procedures; that the County Engineer must approve the connection points; that a sewer concept plan must be submitted for review and approval prior to any sewer construction; that one time system connection charges will apply; and that a concept plan is required.

The Commission found that Davis, Bowen & Friedel, Inc. provided copies of the PLUS comments and their responses to PLUS; an Environmental Assessment and Public Facilities Evaluation Report; their transmittal letter and Service Level Evaluation Request that was sent to DelDOT referencing the proposed land use and the approved land use; the previously approved site access and DelDOT off-site requirements; the reduction in proposed site access points; the reduction in proposed land use, due to the size and projected traffic; a trip generation study; DelDOT projects; a summary with attachments relating to the Zoning Map; the Future Land Use Map; previously approved entrances; previously approved construction plans; approved minor subdivisions; traffic impact studies; current trip generations; PLUS comments and Responses; and DelDOT contracts.

Mr. Lank advised the Commission that the Department has not received any correspondence in support of or in opposition to this application to date.

The Commission found that James Fuqua, Esquire of Fuqua, Yori and Willard, P.A. was present on behalf of the applicants with Ring Lardner, Professional Engineer of Davis, Bowen and Friedel, Inc. and that they stated in their presentations and in response to questions raised by the Commission that the applicants were out of state and apologize for not being available for the public hearing; that they are proposing 142 multi-family units on 31.34 acres of land; that access to the site will be from Oak Orchard Road; that the parcel contains approximately 1,000 feet of frontage along John J. Williams Highway; that the site is zoned B-1 Neighborhood Business; that the property to the west is an undeveloped C-1 General Commercial zoned property; that the property to the south is a GR General Residential subdivision; that the properties to the east include the Nanticoke Indian Museum and the Boys and Girls Club and Oak Orchard Road; that the entrance will be limited to Oak Orchard Road; that multi-family use can be considered permitted if the Conditional Use is approved; that the property was purchased in 2002 with the B-1 Neighborhood Business zoning, and a 24 lot business park subdivision was proposed; that the business park subdivision never developed; that in 2005 a mixed use business and multi-family proposal was submitted proposing 99 units; that the Planning and Zoning Commission had recommended approval of a Conditional Use for that purpose for a reduced 79 units in March of 2006; that the mixed use proposal never developed; that another site plan was filed for a shopping center with nine (9) buildings and 800 parking spaces, which never developed; that the area has grown with multiple rezoning applications providing commercial space for large groceries, convenience stores, drug stores, etc.; that the real estate market for commercial space

in the area has decreased along with the economic slowdown in the County; that the Oak Orchard Sewer District also caused delay in planning for construction; that the applicants feel that multi-family use is a more appropriate use of this property at this time; that proposing 142 units conforms to the Sewer District capacity allocation; that the site is located in the Oak Orchard Sanitary Sewer District; that central water will be provided by Tidewater Utilities; that the land is cleared, not wooded; that the site is not in a flood zone; that there are no wetlands on the property; that no historical or cultural issues have been found on the property; that the stormwater facilities will be designed per the Sussex Conservation District regulations; that the site is located in the Indian River Volunteer Fire Company service area; that the site is in the Indian River School District; that DelDOT has advised them that the only vehicular access to the site will be from Oak Orchard Road; that there will not be any vehicular access from John J. Williams Highway; that the use is less impacting than commercial uses; that the Delaware State Housing Authority supports the intended use; that they are proposing to create a boulevard drive with internal access; that the drives will be built to County specifications; that the recreation area will include a pool, pool house, and tot lots; that they are proposing set-asides for possible interconnection to the adjacent property to the west; that they are planning an open space area adjoining the Nanticoke Indian Museum; that sidewalks will be provided; that a 10-foot wide landscape strip/screen will be provided on the south side, adjacent to Oak Meadows Subdivision; that a 6-foot high privacy fence is proposed to be erected on the west side; that landscaping and a multi-use path are proposed along Route 24; that stormwater management facilities will be designed subject to the approval of the Sussex Conservation District with wet ponds and infiltration areas; that there will be no more run-off than what already exists; that the use is appropriate and conforms to the Comprehensive Land Use Plan and the Zoning Code; that they are submitting suggested proposed Findings of Fact for consideration; that water currently settles near the center of the property and then runs off toward the southwest corner of the property and then drains toward the Indian River Bay to the south; that they will not be impacting any wellhead protection areas; that the Department of Education did not comment on the application when the application was reviewed by PLUS; that they will be submitting plans to the Indian River School District for information on the need and location of a bus stop; that DelDOT requires that the entrance plan be reviewed by DART; that DelDOT estimates that the proposed project will generate 90% less traffic than a large scale commercial use; that the project will actually improve drainage in the area and on adjacent properties; that there should be no negative impact on adjacent developments; that an existing sewer line easement exist between the site and the museum property; that the developer is proposing additional landscaping along the property line with the museum and the Boys and Girls Club; that there should be approximately 40 feet between the property line to the south and any buildings; that an existing Tidewater Utilities easement along the rear line will be extinguished; that sidewalks can be extended to the Boys and Girls Club entrance and/or Oak Orchard Road; that the buildings will be either two or three stories tall; and that the units may be sold in the \$200,000.00 price range.

Ms. Cornwell provided the Commission with comments prepared by the staff when they reviewed the application.

The Commission found that there were no parties present in support of the application.

The Commission found that Natosha Carmine, Chief of the Nanticoke Tribe, John Baqun, a resident of Oak Meadows, and Ronney Wright, a property owner across John J. Williams Highway, were present and expressed concerns that the Nanticoke Indian Museum is a historic site; that the Tribe is concerned about the impact of any development on the Museum property; that the Tribe is concerned about traffic and traffic volumes existing and increased due to this and other projects; that the Tribe does not want foot traffic crossing their property due to safety concerns and trespassing; that there are drainage concerns in the area; that the Tribe would have liked to have been informed more about the details of the project; that they would hope that the building heights will conform to the height of the museum building; that they would like consideration in the landscaping in the buffer areas; that an earthen berm may benefit the Oak Meadows subdivision; that, today, the site has approximately 5 acres of standing water on it at a depth of 2 foot; that the Oak Meadows community has been impacted by runoff from the site in the past; that the majority of the lots in Oak Meadows are occupied year round; that an entrance to the westerly end of the site on Route 24 may resolve some of the traffic issues; that parking lot lighting may impact the residents in the area; that vehicular lights may also impact the residents in the area; that fencing and landscaping along Route 24 may help in blocking out vehicular lights; that the use of a tribal name for the project and street names may be appropriate; and that the residents of the area are aware that DelDOT will be improving and widening Route 24.

The Commission found that Mr. Lardner responded to the lighting questions by advising the Commission that street lights will be downward illuminated and will be designed and located by the Delaware Electric Cooperative, the electrical utility for the area.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

C/Z #1793 – Church of God of Prophecy

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) to a CR-1 (Commercial Residential District) for a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 5.06 acres, more or less. The property is located west of Zoar Road (Route 48) 200 feet south of Sussex Pines Road (Road 324) (911 Address: 21950 Zoar Road, Georgetown) Tax Map I.D. 135-23.00-18.01, 18.02 & part of 18.03.

It was noted that Mr. Smith left the chambers and would not be participating in this public hearing.

The Commission found that DelDOT provided comments on August 24, 2015 in the form of a letter and Support Facilities Report referencing that they recommend that this rezoning application be considered without a Traffic Impact Study and that the need for a Traffic Impact Study be evaluated when a subdivision or land development plan is proposed.

The Commission found that the County Engineering Department Utility Planning Division provided comments on February 23, 2016 referencing that the project is not in a proposed or

existing County operated and maintained sanitary sewer and/or water district; that the parcel is within the Town of Georgetown's future growth and annexation area; that the applicants can contact the Town of Georgetown for information regarding central sewer; and that a concept plan is not required.

The Commission found that Pennoni Associates provided an Exhibit Booklet for the applicants and that the Exhibit Booklet contains references to the project team and their qualifications; the rezoning with attached 2012 aerial; an aerial with area zoning information; a zoning plan map; a legal description; a copy of the deeds; a series of maps and aerials; excerpts from the County Comprehensive Land Use Plan; site plans; floor plans; a copy of the Service Level Evaluation Request and DelDOT response; and suggested proposed Findings of Facts for consideration.

The Commission found that three (3) letters and a petition containing 242 signatures in support of this application have been received.

The Commission found that Mark Davidson, Vice President of Pennoni Associates, was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that a portion of the property is already zoned CR-1 Commercial Residential; that the site is in close proximity to the DelDOT facilities and the Department of Motor Vehicles to the rear; that he has been working with the church members to expand the church facilities; that the sanctuary currently seats approximately 400; that the expansion will allow for approximately 1,000 seats; that the site has appropriate acreage to provide the necessary parking; that a 1.0 acre easement is being proposed with the adjacent Rodney Smith lands for a possible shared access location; that the Town of Georgetown provides central water for drinking and fire protection; that wastewater is currently on site and hopefully in the future can be provided by the Town of Georgetown; that DelDOT did not require a Traffic Impact Study; that suggested proposed Findings of Facts have been provided in the Exhibit Booklet; that several vehicles have been displayed on the site for sale by church members, but it is not the intent to create a used car lot; that the site is surrounded on three sides by commercial zoning; and that this application is an infill property and is intended to create a contiguous zoning boundary rather than the property have mixed zoning classifications.

Ms. Cornwell provided the Commission with comments prepared by the staff when they reviewed the application.

The Commission found that there were no parties present in support of the application.

The Commission found that Glenda Scott, an area resident, expressed concerns about traffic, speeding traffic, and sewer issues, and added that the church has been a good neighbor.

At the conclusion of the public hearing, the Commission discussed this application.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried 4 – 0 to defer action for further consideration. Motion carried 4 – 0. Mr. Smith abstained from participating in the discussion or vote.

C/Z #1795 – Bay Forest Club, LLC c/o Natelli Communities, Inc.

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from a MR-RPC (Medium Density Residential District – Residential Planned Community) to a MR-RPC (Medium Density Residential District – Residential Planned Community) for the purpose of correcting the number of units for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 385.00 acres, more or less. The property is located east of Road 347 (Whites Neck Road) and north of Road 349 (Old Mill Road) (911 Address; None Available) Tax Map I.D. 134-8.00-15.02 and numerous other parcels.

Mr. Lank advised the Commission that DelDOT comments were not requested since the purpose of this application is to correct the number of units within the project.

The Commission found that the County Engineering Department Utility Planning Division provided comments on this application on February 23, 2016 referencing that the project is within the Millville Expansion Area of the Bethany Beach Sanitary Sewer District; that Ordinance 38 construction will be required; that the current System Connection Charge Rate is \$6,304.00 per EDU; that the parcels will receive sewer service through an extension of existing sewers within the existing Bay Forest Club; that the developer will undertake construction of necessary extensions at their cost; that conformity to the South Coastal Area Planning Study, 2005 Update will be required; that connection to the sewer district is mandatory; that the proposed project is in a recent expansion area and sanitary sewer service is available to the parcels; that the proposed project is within planning study assumptions for sewer service and there will be adequate capacity for the projects proposed 913 units as indicated on the approved sanitary sewer concept plan; that the County requires design and construction of the collection and transmission system to meet County Engineering Department requirements and procedures; that the County Engineer must approve the connection points; that a sewer concept plan was approved for 913 units on December 1, 2015; that if pipeline alignments will change, a revised sanitary sewer concept plan must be submitted for review and approval; and that a concept plan is required.

The Commission found that Morris Ritchie Associations, Inc. provided an Exhibit Booklet on behalf of the applicants referencing the application; an introduction; references to existing conditions; proposed conditions; RPC conditions; a conclusion with attached exhibits of the Amended Master Plan, and a plan of a portion of the project north of Collins Creek.

Mr. Lank advised that Commission that the Department had received 14 mail returns to date of the approximate 580 public notices mailed.

The Commission found that Tom Natelli of Natelli Communities was present on behalf of the application with James Fuqua, Jr., Esquire of Fuqua, Yori and Willard, P.A., and Ken Usab, Professional Engineer with Morris & Ritchie Associates, Inc. and that they stated in their presentation and in response to questions raised by the Commission that the Bay Forest Residential Planned Community project was approved in 2004 for 808 units; that in 2008 the site plan for the project was amended to incorporate the boundaries of the Byewood Subdivision and that the access to the Byewood Subdivision was relocated internally into the project; that in 2014 a rezoning application was filed and approved incorporating the Jim's Hideaway campground

property and the Mitchell property into the project for an additional 84 units and a relocated entrance design creating a total of 892 units; that in redesigning the layout of the project there were several enclaves of small areas found that could be converted to additional lots; that this proposal is intended to correct and improve those areas with 21 additional units for a total of 913 units overall; that the County Engineering Department has confirmed that 913 units are within sewer capacity allocations; that originally buffers existed between the project and the Jim's Hideaway and the Mitchell properties; that by incorporating those properties the buffers were removed; that the 21 units will be a part of the project; that central water and central sewer are provided; that the streets interconnect; that they are submitting suggested Findings of Fact and Conditions of Approval for consideration; that the units have been intended since the project first started; that the overall land plan has not changed; and that the area being developed includes the proposed 21 unit expansion.

The Commission found that there were no parties present in support of the application.

The Commission found that Robert Danzig was present, not in opposition, but questioning if one of the areas proposed for additional units is the site of the model home under-construction or in wetlands.

The Commission found that Mr. Usab responded that the units will be adjacent to the model home and not in any wetlands.

The Commission found that Joseph Loughran, a resident in the project, stated that a single family home model and a townhouse model exist in the project.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

OTHER BUSINESS

Bella Terra, LLC off of North Union Church Road – C/U #1884 Preliminary Site Plan

Ms. Cornwell advised the Commission that this is a Preliminary Site Plan for the establishment of a Landscape Business off of North Union Church Road. The use required a Conditional Use as the property is zoned AR-1. The County Council approved the Conditional Use on May 10, 2011. The Planning Commission recommended approval of the Conditional Use on March 24, 2011. The plan indicates bins for the storage of material, a debris pile, and an office. The use of a manufactured home type structure requires a Special Use Exception by the Board of Adjustment. An application for the Special Use Exception has been made to the Planning Office. The site plan complies with the conditions of approval. The tax parcel is 230-26.00-1.02. The Planning Office is awaiting agency approvals.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve the Preliminary Site Plan subject to the approval of the Special Use Exception by the Board of Adjustment with Final Site Plan approval subject to staff upon receipt of agency approvals. Motion carried 5-0.

Dean Sherman/Sherman Heating Oil on Elm Street – C/U #2030
Preliminary Site Plan

Ms. Cornwell advised the Commission that this is a Preliminary Site Plan for the placement of propane and oil storage tanks. The Planning Commission recommended approval for the Conditional Use on October 15, 2015. The County Council approved the Conditional Use on November 3, 2015. There are four (4) proposed tanks on the west side of the site along Seaford Road. The Plan complies with the conditions of approval. The Property is zoned C-1. The tax parcel is 331-3.00-164.00. The Planning Office is awaiting agency approvals and response to the planning review letter.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the Preliminary Site Plan. Motion carried 5-0.

Wyoming Millwork Facility on Gravel Hill Road
Preliminary Site Plan

Ms. Cornwell advised the Commission that this is a Preliminary Site Plan for the construction of six (6) 9,900 SF lumber warehouse buildings and one (1) 9,900 SF retail and supply center building with site improvements to be located off of Gravel Hill Road. The property is zoned HI-1 (Heavy Industrial District). The uses are permitted within the zoning district. There will be a gravel area between the lumber warehouse buildings for potential storage and lumber yard. The plan complies with the required parking spaces and the Zoning Code. The tax parcel is 235-19.00-23.00. The Planning Office is awaiting agency approvals and response to the planning review letter.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve the Preliminary Site Plan with Final Site Plan subject to staff approval upon receipt of agency approvals. Motion carried 5-0.

Rehoboth Pointe on Route One
Preliminary Site Plan

Mr. Brandewie advised the Commission that this is a Preliminary Site Plan for the construction of a 4,293 sq. ft. warehouse to be located at the intersection of Route 1 and Rehoboth Avenue. Extended (Route 1A), the entry way into downtown Rehoboth Beach. Two residential structures will be removed to accommodate the new structure. The site received a variance to the buffer and setback requirements in 2013 and an extension for the variance was granted by the Board of Adjustment. The plan proposes parking within the front yard setback. The parking located within the front yard setback requires approval by the Planning Commission. No new driveway cuts are proposed. The property is zoned C-1 Commercial. The tax parcel number is 334-13.19-

84.00 and 85.00. The Planning Office is awaiting agency approvals and response to the planning review letter.

There was discussion regarding the site plan with concern over the architecture of the proposed warehouse building as it is a gateway for Rehoboth Beach, the lack of representation at the Planning Commission meeting, and concern with the potential change of uses in the future.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the Preliminary Site Plan with Final Site Plan approval subject to the Planning Commission upon receipt of agency approvals. Motion carried 5-0.

The Vineyards at Nassau Valley – Phase 2 Preliminary Site Plan

Mr. Brandewie advised the Commission that this is a Preliminary Site Plan for Phase 2 for the construction of additional residential homes. This phase consists of 316 residential dwelling units using single-family, apartments and condominium building types. The plan would modify the parking lot contained in the Phase 1 and 1A projects. The Planning and Zoning Commission previously approved a revised Master Plan-Concept Plan for the project on November 12, 2015. The property is zoned C-1. The tax parcel number is 334-5.00-152.06. The Planning Office is awaiting agency approvals and response to the planning review letter.

There was discussion regarding the plan and the Commission asked questions of Ring Lardner of Davis, Bowen, & Friedel, Inc.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the Preliminary Site Plan with Final Site Plan approval subject to the Planning Commission upon receipt of agency approvals. Motion carried 5-0.

Lands of Eric Henry on Mount Pleasant Road Minor Subdivision off of a 50' Easement

Ms. Cornwell advised the Commission that this is a minor subdivision to allow for the creation of a parcel of land to be located off of a 50' easement. The 50' easement will utilize the existing agricultural entrance. Staff notes that the proposed parcels along the front do not require Planning Commission approval as they are off of a DelDOT maintained road. The existing chicken house that crosses the property is to be removed and that the property line is proposed to be removed. The property is zoned AR-1. The tax parcels are 432-10.00-9.00 and 9.01. The Planning Office is awaiting DelDOT approval.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve the Minor Subdivision off of an existing 50' easement. Motion carried 5-0.

Lands of Dixie Gildon off of Willow Creek Road

Minor Subdivision off of a 50' Easement

Ms. Cornwell advised the Commission that this is a Minor Subdivision off a 50' easement for the creation of one (1) parcel of land. The proposed parcel "C" will be 1.2 acres +/- and the residual area will be parcel "A" containing 3.818 acres +/- . The existing parcels have access off of Willow Creek Road, that is located within the Willow Creek Subdivision. The parcels are not part of the Willow Creek Subdivision. A maintenance agreement for the existing parcel "A" exists between the Willow Creek Subdivision. A new maintenance agreement to include parcel "C" will need to be addressed prior to the recordation of the minor subdivision. The property is zoned AR-1. The tax map is 235-23.00-3.01. Since it is located on a private road approval from DelDOT is not required.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve the Minor Subdivision upon receipt of the revised maintenance agreement for the road. Motion carried 5-0.

Meeting adjourned at 8:22 pm.